NoFEAR Act Training

Defense Human Resources Activity

NoFEAR Act Training - Agenda

EXPLAIN

- **The Notification and Federal Employee Antidiscrimination & Retaliation Act (No FEAR Act)**
- **Antidiscrimination Laws:**
- **Whistleblower Protection Laws**
- **How to File a…**
  Complaint of Discrimination;
  Complaint of Retaliation;
  or a Violation of the Whistleblower Protection Laws.

What is the NoFEAR Act?

On May 15, 2002
Congress enacted the NoFEAR Act

NoFEAR requires Federal agencies
to protect the rights of employees, former employees,
and applicants for employment
under discrimination, whistleblower and retaliation laws.

What is the NoFEAR Act?

Federal agencies must:

- **Reimburse the Treasury Judgment Fund for payments made in Federal District court cases involving violations of discrimination and whistleblower laws.**
- **Post information on complaints of discrimination on its public website and annually report to Congress.**
- **Train and notify employees on their rights and protections under the antidiscrimination and whistleblower laws.**

Anti-Discrimination Laws

- **<u>Antidiscrimination Laws</u>:**

  Laws enforced by the U.S. Equal Employment Opportunity Commission (EEOC) which protects Federal employees and applicants from employment discrimination based on race, color, religion, sex, national origin, age, disability and genetic information.

- **<u>The NoFEAR Act</u>:**

  <u>DOES NOT</u> cover discrimination based on sexual orientation or parental status.

Anti-Discrimination Laws

Protects you from discrimination regarding the terms and conditions of your employment in relationship to:

- **Hiring, promotion, pay, leave, awards, training, assignments, suspensions, and terminations.**
- **Requests for disability and religious reasonable accommodations unless doing so would impose an undue hardship on the employer.**
- **Harassment or creation of a hostile work environment based on race, color, religion, sex, national origin, disability, age, or genetic information.***

*** DHRA has a zero tolerance policy on harassment.**

Title VII of the 1964 Civil Rights Act

Prohibits discrimination against Federal employees and applicants from employment discrimination on the basis of race, color, religion, sex, and national origin.

Sexual harassment and pregnancy discrimination are considered forms of sex discrimination.

It also prohibits retaliation against individuals exercising their rights under the Act.

The Age Discrimination in Employment Act (ADEA)

Prohibits discrimination
against Federal employees and applicants
who are 40 years of age or older.

Claims of discrimination
under the ADEA
may proceed directly to U.S. District Court*

***Aggrieved individuals complaining about age discrimination may give notice of intent to sue to the Equal Employment Opportunity Commission within 180 days of the alleged discrimination.**

The Equal Pay Act of 1963

**Mandates the same pay
for persons who do the same work
without regard to sex.**

**An aggrieved individual does not have to file
an administrative complaint
before filing a lawsuit under the Equal Pay Act.**

**If an aggrieved individual wants to file
an administrative complaint,
it will be processed like Title VII complaints.**

The Rehabilitation Act of 1973

Applies To
Federal Government Employees

Prohibits employment discrimination against qualified individuals with disabilities.

Requires agencies to provide reasonable accommodations for an employee or applicant with a disability.

The Rehabilitation Act of 1973

What is a Qualified Individual with a Disability?

An individual with a physical or mental disability
who satisfies
the requisite skill, experience, education
and other job-related requirements
of the employment position
such individual holds or desires,
and who,
with or without reasonable accommodation,
can perform the essential functions of the job.

The Rehabilitation Act of 1973

Reasonable Accomodation:

Is an adjustment to a job or the workplace to enable the disabled individual to perform the job.

Does not have to be specifically what is requested by the individual but does have to be reasonable and effective.

The agency has no obligation to change performance standards or to eliminate essential functions of the position as a reasonable accommodation.

The Americans with Disabilities Act Amendments Act (ADAA)

Major Changes to Disability Law:

Adopted on September 25, 2008, and became effective January 1, 2009.

Law provides broader definition of what is covered by the term disability.

Law provides broader definition of what is major life activities.

The Americans with Disabilities Act Amendments Act (ADAA)

Broadening the Term Disability:

An impairment need not limit other life activities.

An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

Determination made without regard to ameliorative effects of mitigating measures.

The Americans with Disabilities Act Amendments Act (ADAA)

Defining Mitigating Measures:

Disability is determined without reference to ameliorative effects of mitigating measures.

Mitigating Measures Include:

- **Medication**
- **Medical Supplies or Equipment**
- **Low-Vision Devices (not including ordinary eye glasses)**
- **Prosthetic limbs & devices**
- **Hearing Aids & Cochlear Implants**
- **Mobility Devices**
- **Oxygen Therapy**
- **Use of assistive technology**
- **Learned behavioral or adaptive neurological modifications**

The Americans with Disabilities Act Amendments Act (ADAA)

Broadening the Term Major Life Activities:

Major Life Activities Include:

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working
- Major Bodily Functions
- Speaking

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)

Prohibits discrimination

against employees or applicants because of genetic information.

Forbids discrimination on the basis of genetic information when it comes to any aspect of employment.

Also makes it illegal to harass an employee because of his or her genetic information.

Protection Against Reprisal of Retaliation

Reprisal/Retaliation

Discrimination based on a person's prior EEO activity, for example filing a complaint of discrimination, including:

- **opposing discriminatory practices; or**
- **participating in any stage of administrative or judicial proceeding under Title VII, the Rehabilitation Act, the Age Discrimination in Employment Act, the Equal Pay Act, and Title II of the Genetic Information Nondiscrimination Act of 2008.**

If You Believe Discrimination Occurred

Contact the EEO Office

within 45 calendar days

of the alleged discriminatory action or the effective date of the action.*

***The names and telephone numbers of the EEO staff are available on bulletin boards, the DHRA internet or you may contact your EEO Officer.**

The Complaint Process

RESOLVE THE COMPLAINT

- **An EEO counselor will try to resolve the complaint or you may choose to use *Alternative Dispute Resolution (ADR)* to resolve your complaint.**

NOTICE OF RIGHT TO FILE A FORMAL COMPLAINT

- **If the complaint is not resolved, you will be provided a Notice of Right to File a Formal Complaint. You must file within *15 calendar days* from receipt of the Notice.**

NEGOTIATED BARGAINING AGREEMENT

- **Employees covered by a negotiated bargaining agreement which permits allegations of discrimination may elect to proceed under the negotiated bargaining agreement, rather than filing a formal complaint of discrimination. *You cannot do both.***

The Complaint Process

EXTENSION OF TIME FRAMES

- **In some cases, extensions of the time frames for contacting a counselor or filing a complaint are possible, if a sufficient reason is presented.**

REASONS FOR UNTIMELINESS

- **Explain any delays for untimely counselor contact or complaint filing. The Agency will make the decision if the time limits may be extended.**

OFFICIAL TIME TO PREPARE EEO COMPLAINT

- **You are entitled to a reasonable amount of official time (granted in terms of hours) to prepare and present your EEO complaint, to meet with a counselor, an investigator or to participate in the hearing.**

Marital Status & Political Affiliation Discrimination

Federal law makes it illegal to discriminate against Federal employees because of their marital status or political affiliation or to retaliate against employees for exercising their rights.

If you believe discrimination has occurred on one of these basis, you may file a written complaint with the U.S. Office of Special Counsel. You may also pursue such a complaint through the Agency's administrative grievance system or the negotiated grievance procedures, if applicable.

Manager and Supervisor Responsibilities

- **Ensure legitimate, non-discriminatory reasons are provided for the actions they take.**
- **Ensure employees are treated fairly and equitably.**
- **Provide reasonable accommodation to individuals with disabilities.**
- **Only disclose medical information to officials with a need to know and keep medical information separate from personnel files.**

Manager and Supervisor Responsibilities

- **Cooperate with an EEO counselor or EEO investigator. Failure to do so may result in disciplinary action.**
- **Ensure employees are not subjected to a hostile work environment because of their race, color, national origin, religion, age, sex, disability, or genetic information.**
- **Act on and investigate ALL complaints of harassment.**

Whistleblower Protection Act

**The Office of Special Counsel (OSC)
defines a whistleblower,
according to the Whistleblower Protection Act,
5 U.S.C. 2302 (b)(8),
as an employee, former employee, or contractor
who provides information he or she reasonably believes
evidences waste, fraud, or abuse in the form of:**

- **violations of law, rule or regulation;**
- **gross mismanagement;**
- **gross waste of funds;**
- **an abuse of authority; or**
- **a substantial and specific danger to public health or safety.**

Whistleblower Protection Act

Employees may not disclose information specifically prohibited by law or if the information is required under Executive Order to be protected from disclosure in the interest of national security.

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under the Whistleblower Protection Act.

5 U.S.C § 2302(b)(8) prohibits retaliation against an employee or applicant for making a protected disclosure.

Filing a Whistleblower Protection Complaint

If the personnel action is within the Merit System Protection Board's (MSPB) jurisdiction, the appellant may file a complaint with the Office of the Special Counsel (OSC) before filing an appeal with the MSPB, or may choose to go directly to MSPB with an appeal.

If the appellant chooses to go directly to the MSPB:

- **The appeal must be filed no later than 30 days after the effective date of the action being appealed, or 30 days receipt of the agency's decision, whichever is later.**
- **If an Alternate Dispute Resolution (ADR) process is used, the appellant may extend the filing period by 30 days, for a total of 60 days.**

Filing a Whistleblower Protection Complaint

If a stay request has been filed with the MSPB without prior filing of an appeal:

The appeal must be filed within 30 days after the date the appellant received the order ruling on the stay request.

If the personnel action does not fall under MSPB jurisdiction, the appellant must first file a complaint with the OSC before filing an appeal with the MSPB.

Filing a Whistleblower Protection Complaint

A complaint may be filed with OSC by using Form OSC 11 (Complaint of Possible Prohibited Personnel Practice or other Prohibited Activity)

Form OSC-11 can be obtained by contacting:

U.S. Office of Special Counsel (OSC)
Complaints Examining Unit
1730 M Street, NW, Suite 218
Washington, DC 20036-4505
800-872-9855 (toll free) or 202-653-7188

Filing a Whistleblower Protection Complaint

After the OSC complaint process is exhausted, the appellant may file an appeal with the MSPB:

- **No later than 65 days after the date that OSC's written notification was issued terminating the investigation; or**
- **If notification was received more than 5 days after the date of issuance, the MSPB appeal must be filed within 60 days after the date OSC's notification was received.**

If OSC has not notified the appellant that it will seek corrective action within 120 days of the filing date, the appellant may file an MSPB appeal at any time after the 120 day period expires.

Where Do I Go for More Information?

- For questions about the Discrimination Laws, contact your EEO Office at (703) 767-6777.
- For a detailed explanation of the EEO complaint process, visit the web at: http://www.eeoc.gov/federal/index.cfm
- Information regarding the Whistleblower Act and Protections can be obtained from your local HR office, or visit: www.osc.gov

NoFEAR Act Notice

Congratulations!

You Have Completed the NoFEAR Training!

NoFEAR Act Notice

Please click on the link below to view and print the Certificate of Completion

Certificate of Completion